AUTOWORLD BULAWAYO PRIVATE LIMITED
versus
BULAWAYO CAR BREAKERS PRIVATE LIMITED
and
ZIMBABWE REVENUE AUTHORITY
and
THE REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE
MUCHAWA J
HARARE, 22 & 30 September 2021

URGENT CHAMBER APPLICATION

G.R.J. Sithole, for the Applicant
A. Dracos, for the 1st respondent
No appearance for 3rd and 4th respondents

MUCHAWA J: This is an urgent chamber application for an interdict. The applicant is a tenant at stand number 5120, Stockton Road, Belmont, Bulawayo in terms of a lease agreement held with the first respondent. The lease is expiring on the 31st December 2021.

A dispute has emerged between the applicant and 1st respondent regarding the ownership of a 20 meter by 18 meter steel structure which was erected by the applicant in February 2016. When the applicant notified the first respondent's representatives of its intention to remove the steel structure at the end of the lease, this was opposed. The first respondent filed an application for a declaratory order under case number HC 4174/21 in Bulawayo in which it is sought that the court settles the ownership wrangle.

Further, the first respondent proceeded to file an urgent chamber application under case HC 1099/21 on 13 August 2021 seeking an order interdicting the applicant from removing the steel structure as it had found an offer for the sale of the leased property which had to be accepted by 31st August 2021. An order by consent was entered which interdicted applicant and first respondent from removing the steel structure pending the determination of all matters involving the steel structure. It was further agreed that, in the event of it being finally determined

that the steel structure is the property of the applicant herein, then first respondent would be liable to pay compensation to the applicant in such manner and amount to be determined by the Court or to replace the steel structure on the same size, specifications and quality, whichever would be ordered by the Court.

The applicant thereafter approached the court for an urgent interdict under case HC 4318/21 seeking to bar the first respondent from including the steel structure in any intended sale pending the determination of case HC 4174/21An interim order was granted on 2nd September 2021 which provided for non-inclusion of the steel structure in any sale agreement.

It is alleged that on the 3rd September 2021, the first respondent's legal practitioner advised the applicant that the property had already been sold inclusive of the steel structure. This is what necessitated this current application. The terms of the order sought are as follows;

> "TERMS OF FINAL ORDER SOUGHT
> That you show cause to this Honorable Court why a final order should not be made in the following terms-
> 1. Pending final determination of the application filed under the cover of case number HC 4174/21, the first respondent be and is hereby interdicted from transferring stand number 5120 Stockton Road, Belmont, Bulawayo.
>
> INTERIM RELIEF GRANTED
> Pending determination of this matter, the applicant is granted the following relief:
> 1. The first respondent be and is hereby interdicted from including the steel structure in any transfer of stand 5120 Stockton Road, Belmont, Bulawayo."

The application is opposed by the first respondent. I heard the parties on the points *in limine* raised in opposition on the impropriety of the form of the application and relief plus urgency and reserved my ruling. This is it and I start off with the question of urgency.

Whether the matter is urgent

Mr *Dracos* submitted that this matter is not urgent from the perspective of time and consequences. Reference was made to the letter of 30 March 2021 which was written by the applicant's legal practitioners to first respondent's legal practitioner in which sale of the property was discussed and the applicant made proposals on compensation for the steel structure in the event of a sale inclusive of the steel structure. It was averred that the applicant has not given any explanation for its failure to bar sale and transfer from March 2021 in its founding papers and that the attempt to proffer an explanation in the answering affidavit is unacceptable and of no

moment as the applicant cannot make its case in its answering papers thus taking the right to reply from the first respondent.

My attention was also drawn to the consent order which was entered on 18 August 2021 in which the parties agreed to the alternative remedy of compensation for the steel structure or its replacement in the event that it was found that the applicant was the owner. It was argued that in terms of consequences, there is no irreparable harm likely to be suffered by the applicant if this matter is not treated urgently. Additionally, it was contended that the applicant should have known that every sale of immovable property is followed by transfer, and should have taken that into account from the initial approach to court.

Mr *Sithole* submitted that the matter is urgent on both the time factor and harm feared. On time, it was averred that the need to act did not arise on 30 March 2021, but just after 2 September when Honourable ZHOU J granted the interim order interdicting the first respondent from including the steel structure in any sale agreement of the property and when such order turned out to be a *brutum fulmen* as the property had already been sold inclusive of the steel structure. The applicant's case is that it acted urgently thereafter by filing the instant application on 9 September in order to protect its property as it is common cause that transfer had not yet taken place. It was argued that if transfer is allowed to take place, then the case dealing with ownership under HC 4174/21 would be rendered academic.

Furthermore, it was stated that since the lease agreement is still running, the case is urgent. To this, Mr *Dracos* submitted that it does not matter when the ownership dispute is resolved as summons were already issued.

In the case of *Gwarada* v *Johnson & Ors* it was held;

> "A matter does not assume urgency because a litigant has plans, the fulfillment of which require an immediate solution. Urgency, in my view arises when an event occurs which requires contemporaneous resolution the absence of which would cause extreme prejudice to the applicant. The existence of circumstances which may in their very nature be prejudicial to the applicant is not the only factor that a court has to take into account, time being of the essence in the sense that the applicant must exhibit urgency in the manner in which he has reacted to the event or the threat whatever it may be."

In casu it appears to me that the very existence in March 2021 of the possibility of the sale of the premises with the steel structure created the existence of circumstances which in their very nature could lead to the eventuality of a sale and transfer occurring. From the very

beginning, the applicant did nothing to assert its rights as it now seeks to do. It even consented to an order which provided for compensation or replacement of the steel structure on 18 August 2021 well aware that the first respondent was in the process of selling the premises. The applicant has not therefore exhibited urgency in the manner it reacted to the threat of the sale and transfer of the premises. There are many litigants waiting to have their matters heard and the applicant cannot approach the court piecemeal and at every turn and twist hoping to be given the privilege of jumping the queue every time.

I find that this matter is not urgent. There is therefore no need to proceed to determine the other points *in limine* and I accordingly strike this matter off the roll of urgent matters with costs.

Rubaya and Chatambudza legal practitioners, applicant's legal practitioners
Majoko and Majoko, 1st respondent's legal practitioners